

Ernesto Santiago

v.

U.S.A.

CA No: 04-335E

CUSA: Susan Paradise Baxter

## Motion for Reconsideration for Document #10

## Injunctive Relief To prevent future Retaliation

Now Comes, Ernesto Santiago "Plaintiff" Seeking Reconsideration of this honorable Courts "Memorandum Order" of September 6, 2005.

Plaintiff Would like your honor To know That on The Contrary to your Order of September 6, 2005 as To the hearing held on September 1<sup>st</sup>, 2005. The Only thing That Was addressed and or resolved was That Santiago received the federal rules of Civil Procedures from AUSA Paul E. Skirtich, Something Mr. Skirtich did Not even have to do. Nothing as To the Legal Library, Copies, Lawbooks, and access to Legal Material in Violation of Due Process that will help Santiago Litigate his Case has Been resolved.

Plaintiff will show your honor Some of his unsuccessful tries at attempting resolution of his Complaints. The Latest being three(3) Sensitive BP-9 To The regional office explaining exactly these Issues (see Exhibits A, B, C) (A1, B1, C1 are Not attached Due To being refused access To copy by D.flatt on 9/14/05 at 3:26PM) This is why a preliminary Injunction is Needed.

Plaintiff would first Like your honor To know and he mentioned this on Record that he did Not know a scheduled hearing with your honor was scheduled for September 1<sup>st</sup>, 2005. Ms.Tronetti (Santiago's Unit Manager) Came By his Cell and Said "You have

Page #2

a lawyer call Tomorrow morning". Santiago Took this To mean his Attorney John Bies, That was appointed By the 3<sup>rd</sup> Circuit for an appeal out of this Court CA-NO (or 391 E) as To his Criminal Sentence was The one calling.

Santiago was Unprepared, Nervous, and Would have explained and defended his position More adequate had he Known a scheduled hearing with your honor Was To Take place The Morning of September 1<sup>st</sup> 2005.

Plaintiff again will show Some facts (some with exhibits) That will clearly establish a pattern of Retaliation.

Plaintiff will also show your honor The four Requisites Needed to Win a preliminary Injunction:

- 1.) I am likely to show at trial that the Defendants Violated my Rights.
- 2.) I am likely to suffer Irreparable harm if I do Not receive a preliminary Injunction
- 3.) The Threat of harm I face is greater than The harm prison officials will face if a preliminary injunction is granted and,
- 4.) A preliminary injunction will serve the public Interest.

Plaintiff also can show your honor that he's Been put in Segregation for filing a Suit against McKean BOP Medical Staff. With Documentation of stories as To my allege Involvement in a food Strike

Page #3

as To The four requisites I will Now show your honor.

1.A) Plaintiff's claim is straightforward and after he shows discovery and Color pictures, This will cease any doubt That McKean BOP Violated plaintiffs Rights.

2.B) Plaintiff has already expressed his Concerns as To Original Documentation for Discovery That if it Disappears Could be crucial because are Not replaceable. Santiago has expressed legal Documents being Confiscated in his Pending CA-NO(05-153 Erie) without Confiscation forms, Reasons, etc. This with No access To LAW Books, Copies, Program Statements, etc. are all irreparable harm. Not allowing Santiago to file administrative Remedies as To Interfering with This Pending Case and placing him in SHU on a fabricated Incident Report are all more Irreparable harm.

3c) No Indication of this Court granting a preliminary Injunction will harm Defendants or will They Suffer in any way or form.

4d) Public Interest and public policy do favor granting Preliminary Injunctions in Matters as these.

Santiago also has documentation that Shows Conflicting stories as to his Incident Report but Again has No Way of getting These Documents Copied.

Page #4

Plaintiff will now show a string of Incidents and he again emphasizes "at first glance they may seem petty and small but reflect subtle forms of Retaliation" against Santiago for his action against B.O.P. Medical Staff at F.C.I. McKean.

5) On April 21, 2005 Attorney John Bies Wrote Santiago as to his 3<sup>rd</sup> Circuit appeal CA No 02-4056 (see Exhibit D)

6) On April 21, 2005 Attorney John Bies Sent by Overnight U.S. Mail a letter to the Secretary in Unit DA (Santiago's Unit) scheduling a phone call for Wednesday April 27, 2005 between 10:30 AM - 11:30 AM. (see Exhibit E)

7) On April 26, 2005 Santiago received a memorandum as to his (Inmate Request To Staff) By Warden James F. Sherman Saying I was placed into the Special Housing Unit on March 10<sup>th</sup>, 2005 for behavior that was perceived as being Disruptive. This is without any reason as Santiago was never given a reason except one of many lies as this memo. (see Exhibit F)

8) On April 27, 2005 Santiago was never taken to make his phone call with his attorney or even given notice as to his phone call.

9) On May 17, 2005 Santiago received a memorandum from Deanna M. Tronetti (Unit Manager) in regards to Santiago's now pending case No: 04-335. Santiago was advised he was authorized by

Regional office that he could keep a copy of his Civil Docket Sheet. This is something Santiago has complained about in his pending CA-No: 05-153E.

Inmates legal papers are taken and opened out of their presence and They (McKean staff) are determining what you can and cannot have in your possession as to legal papers, all in violation of Due process. (See Exhibit G)

On the week of May 24<sup>th</sup>, 2005 four weeks later Santiago was finally taken to make his phone call with attorney John Bies.

On June 1<sup>st</sup>, 2005 plaintiff submitted an "Administrative Remedy" BP-8\*1A regarding the SHU Law Library, Mr. Strade, Copies, etc. (Santiago never received an answer to this BP& and it was ultimately lost).

On June 14<sup>th</sup>, 2005 plaintiff received from Ms. Robare (Associate Warden) a memorandum as to my inmate request to staff. In this memorandum my request were all ignored and unanswered. Ms. Robare stated my requested legal material were placed in the Segregation Law-Library. (Santiago on his Motion #10 received April 15, 2005 complained of this.) In Ms. Robare's memo she claims no evidence was found of Mr. Strade treating plaintiff unprofessional or disrespecting me but all facts I presented were ignored. (See exhibit H)

On July 6<sup>th</sup>, 2005 since my 6-1-05 BP-8\*1A mysteriously got lost Santiago rewrote another BP-8\*2A in front of Ms. Tronetti but did not write all the facts as his 6-1-05 stated; due to only

Seeing Unit DA Manager for (5) Five minutes Once a Week.  
(Was refused to copy this on 9/14/05 By D. Flatt. Education Supervisor)

On July 7<sup>th</sup>, 2005 One month later from the date plaintiff filed his Original BP-8#1A, Plaintiff received an answer to his Secondary BP-8#2A and This was after Continuous inquiries. (Refused to make Copies on 9/14/05)

On July 12<sup>th</sup>, 2005 Both myself and Ms. Tronetti received by overnight mail from attorney John Bies, Letters regarding a 3<sup>rd</sup> Circuit appeal No 02-4056. Attorney Bies scheduled a call for July 19, 2005 at 10:00 AM or if inconvenient July 20, 2005 was available. (see Exhibit I)

On July 17, 2005 Plaintiff filed a BP-9 in regards to BP-8#2A. (Refused to Copy 9/14/05)

On July 19<sup>th</sup>, 2005, Plaintiff Never Made his Legal Call.

On July 20, 2005, Plaintiff Never Made his Legal Call. Plaintiff Was Not informed as to any rescheduling etc.

On August 2, 2005 Plaintiff's July 17, 2005 BP-9 was rejected because Santiago did not address his full Complaint of the Law Library in STL, Copies, Mr. Strade etc. Due to Rushing Because of the "Desperate" Need to start administrative Remedy. (Refused To Copy 9/14/05)

On August 3, 2005 Santiago Submitted his 3<sup>rd</sup> BP-8#(3) as to his prior BP-8#1A and BP-8#2A To his Unit Manager, Ms Tronetti. (Refused To Copy 9/14/05)

Page # 7

On August 4<sup>th</sup>, 2005 Santiago finally made his scheduled July 19, 2005 phone call to attorney John Bies in regards to a 3<sup>rd</sup> Circuit appeal CA No 02-4056. (See exhibit J)

On August 4<sup>th</sup>, 2005 after Santiago spoke to his lawyer John Bies and they reviewed some legal views over the phone, Santiago said he would forward some legal papers to him. Some of which are originals. After the call Santiago spoke to Ms. Tronetti about sending the legal papers which was about 2 1/2 pounds. Ms. Tronetti refused to take the legal mail because she wanted to review it out of Santiago's presence violating program statement 5265.11 and 28 CFR 540.16, 540.18. FCI McKean has a policy (which no inmates have seen) that any legal mail over a pound must go out through the unit team. (Santiago has filed administrative remedy on this.) Plaintiff and Ms. Tronetti debated this for several minutes and then Ms. Tronetti shoved the 2 1/2 pounds of legal mail directly at Santiago's face. Correctional Officer Gabriel was present during this incident. Immediately after the incident Santiago was taken to his cell and asked to speak to the #1 on the range C.O. Carlson. Santiago then called for Lt. Glenn who came to Santiago's cell. Santiago explained as to what had occurred and handed Lt. Glenn a copout as to the incident. Santiago asked the incident be logged in the STU Log with videotape # and that Lt. Glenn speak to C.O. Gabriel.

On August 5<sup>th</sup>, 2005 Plaintiff spoke to

The Captain about The 8/4/05 Incident with ms. Trunetti. The Captain Said he had a policy about The Legal Mail Being inspected out of Inmate presence. The Captain Said he Would Look into the Matter.

On August 5<sup>th</sup>, 2005 Plaintiff filed a BP-8 with Case Manager Bob Fair as To The incident of 8/4/05 with Ms. Trunetti. (This BP-8 To date has Not Been answered)

On August 5<sup>th</sup>, 2005 at 3:00pm Lt. glenn Summoned for Santiago and They Spoke in The Lt's office. Lt. glenn Said he Conducted an Investigation into the matter of 8/4/05 and Spoke to C.O. gabriel. I explained my Side of the Incident and expressed That had i done Something like this i would've been charged with assault. Lt. glenn Said he Spoke To C.O. gabriel and would Talk To Ms. Trunetti. I asked him if he had Logged the incident of 8/4/05 in the SHU Log, he said he did.

On August 8, 2005 Santiago Wrote attorney John Bies asking him to Notify the Erie Court of the Situations he was Enduring. (see Returned Letter as Exhibit K; Refused To Copy on 9/14/05)

On August 8, 2005 Santiago received a Document from McKean Staff Notifying him Legal Mail had Been received But had to be reviewed To determine if Santiago Would be allowed To posses it. (See Exhibit L; Refused To Copy on 9/14/05)

On August 17, 2005 Santiago <sup>Spoke</sup> To Lt. glenn as to his Legal mail That Came on 8/8/05 and

Santiago had not received it. Santiago Received the Documents on this Day and They had to do with CANC 04-335.

Plaintiff has tried Exhausting administrative Remedies but has been Unsuccessful. the Latest Were The denial of (3) Sensitive administrative Remedies as To:

10.) The SHU Law-Library, Law Books, P.S., CFR's, Copies and Mr. Strade Treating Santiago Rude and Unprofessional

11.) Ms. Tronettis actions Towards Santiago and The policy about Inmates Legal Mail.

12.) Santiago's Counselor Doug Glenn Not Responding to his Submitted BP-Ss.

The Regional office Denied all These as Not Sensitive. (See exhibits A, B, C.)

Plaintiff is again in the process of appealing The Regions decision To Washington.

Plaintiff Wants your honor To Know That he is Working Solely from "The jailhouse Lawyers Handbook" published by The Center for Constitutional Rights and the National Lawyers Guild; 4<sup>th</sup> Edition, Revised in 2003. Your honor Knows That Santiago is literate. Santiago Prays an Injunction will be granted To Stop This process of Continuous forms of Retaliation That Continue even after The September 1<sup>st</sup>, 2005 hearing.

### Conclusion

Plaintiff Concludes This motion with Several

Request; That your Honor:

13.) Reconsider and Issue a preliminary Injunction for 90 days in Order to Secure all access for plaintiff to be ready for trial, including Plaintiffs pre-Trial Statements, Interrogatories, access To Law Books, Copies,etc and Time in the Law Library.

14.) Appointment of a Paralegal for some assistance as To Santiago really has No experience and has Many Unanswered Questions, especially with No Legal Law Library access.

15.) Appoint an Investigator to Inspect The SHU Law Library and the Conditions Santiago has for over (6) Six Months been Subjected to for filing this Complaint.

16.) Order Christopher Strade or his Supervisor D. Flatt To make all requested Legal materials/s available By way of photocopies at their expense Since The SHU Law Library is inadequate and Violating My Due Process Rights.

17) Order that I be allowed to get a reasonable amount of time in the Law Library with Inmate Reginald Thaddeus Gilbert Bey #03854-078 who has agreed to assist me with further Research and preparations, Especially with The Interrogatories i am Now faced with That deal To this case. This of Course Would be without Interference of The SHU's Running and Daily operations. Denial of Legal assistance from another Inmate as i have been

Page # 11

a Victim of here at McKean is a Violation of Title 28 CFR Ch. V § 543.11 (F) (1)(2)(i)(ii)(4). Plaintiff has repeatedly Complained about this denial and Violation of Title 28 CFR ch V. § 543.11 (A) & (B) authorities are in Violation of Statutory Mandate, That Materials ,and Time, research be adequately Provided.

17.) That Your honor Consider having a hearing at FCI McKean where Santiago Can Present a Better Argument with Many of The Documents Staff refuse To Copy, all The more The Injunction is Needed.

### Addendum

On September 14<sup>th</sup> 2005 I Was refused Copies of Exhibits I mentioned But are Not attached, I do However Have The Originals. This Refuse To Copy mentioned Material Was By D. Flatt at 3:26 P.M Education Supervisor. I handed a Inmate request To Staff To Mr. Flatt and asked him To put This in Writing. This again Your honor is a clear Showing That Nothing has Been resolved By The Regional Representative who was present on September 1<sup>st</sup>, 2005 hearing. I Continue To be retaliated and am a Victim of GNC (got Nothing Coming) ("a Treatment familiar To Inmates as Myself who file Administrative Remedies and Court actions,") Especially Since The September 1<sup>st</sup>, 2005 hearing. Plaintiff has Now Been Talking With Mr. Flatt instead of Mr. Strade Since The

Page #12

September 1<sup>st</sup>, 2005 hearing, Still To No Avail. Now I'm being Limited To what I can Send To you as No Copies of exhibits Were Made. McKean Staff Knew I Wanted Copies for you and These Were Not allowed.

In Short, "I am being Squeezed Like a Python's Prey as To what I am allowed To Submit To The Court".

Santiago Prays your honor will have another hearing and Issue a preliminary Injunction for 90 Days with Said Requests.

Respectfully Submitted  
Pro-Se, Ernesto Santiago 9/15/05

### Certificate of Service

I hereby Certify That I have Served The Original and a Copy of: (motion for Reconsideration for Document #10 Injunctive Relief To prevent future Retaliation) Via First Class Mail on This 15<sup>th</sup> day of September 2005 To

Clerk of Court  
P.O. Box 1820  
Erie, PA 16507  
(Original)

Paul E. Skirtich (AUSA)  
700 Grant Street #400  
Pittsburgh, PA 15219  
(Copy)

Ernesto Santiago Pro-Se  
September 15<sup>th</sup>, 2005

Stamp file, To return in SASE

Dear Clerk,

9/15/05

Enclose please find and file  
CA-No 04-335E 26 pages in Total of (Motion for  
Reconsideration for Document #10 Injunctive Relief  
to prevent future Retaliation) Can you please stamp  
file this for my file in Order its know you have  
received this. Thank you very much.

Sincerely,  
Enrique Santiago